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ABSTRACT

Four sexually exploited clients shared their experiences in invoking the complaint process against their former therapists. They wanted to stop the therapist from practicing and harming others, to receive some acknowledgement that they had been harmed, and to obtain some kind of recompense. If the therapist was unable to admit his or her error, make restitution, or stop injuring others, they expected the ethics committee, the licensing board, or the court to ensure this result. Two of the clients initiated their complaints through the ethics committee of their therapist's professional association. One client began with the licensing board, and one started with a lawyer and a malpractice suit. They all had suggestions on how to improve the complaint process for others: (1) have an advocate who can discuss possible options in pursuing a complaint; (2) expedite the process of ethics committees, licensing boards, and legal action; (3) pay members who sit on ethics committees and licensing boards; (4) explain the procedures of ethics committees and licensing boards, give estimates on the length of time involved, and directly communicate the results; (5) establish mandatory reporting by other professionals; (6) establish a criminal law; (7) keep data banks on abusive therapists; and (8) extend the statute of limitations. Many of these recommendations are supported in the literature. Professionals need to come together to review these recommendations, put them in an acceptable form, and implement them in order to protect the public welfare. (Author/NB)

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IMPROVING THE COMPLAINT PROCESS FOR SEXUALITY EXPLOITED CLIENTS

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Abstract

Four sexuality exploited clients shared their experience of the complaint process against their former therapist. They were concerned with stopping the therapist from practicing and harming others. They also wanted some acknowledgement that they had been harmed, and wanted some kind of recompense. If the therapist was unable to admit his or her error, make restitution, and stop injuring others, they expected the ethics committee, the licensing board, or the court to insure this result. Two of the clients initiated their complaints through the ethics committees of the therapists' professional associations. One began with the licensing board, and one started with a lawyer and a malpractice suit. Several continued with further actions. They all had suggestions on how to improve the complaint process for others. Several felt that it would be beneficial to have an advocate, who could discuss possible options in pursuing a complaint. All supported expediting the process of ethics committees, licensing boards, and legal action. Two recommended paying members who sit on ethics committees or licensing boards. Three favored that the procedures of ethics committees and licensing boards be fully explained, estimates given on the length of time involved, and the results communicated directly. Several mentioned that mandatory reporting by other professionals would have been useful. One mentioned she favored a criminal law. Another advocated keeping data banks on abusive therapists. All believed the statute of limitations should be extended. Many of these recommendations are supported in the literature. Professionals need to come together to review these recommendations, put them in an acceptable form, and implement them in order to protect the public welfare.

The objective of this paper is to come up with suggestions for improving the complaint process in Massachusetts for clients who have been sexually exploited by their therapists. The methodology was to interview clients who had been through this experience, and learn what improvements they thought could be made in order that others wouldn't have to confront the same problems. The literature suggests that most clients feel better after the complaint process is completed.(1) It would seem that clients would feel better if they achieved their objectives--having the therapists lose their license, receiving money to pay for their past ineffective therapy or additional therapy, or stopping the therapist from harming others. If they don't succeed, they may feel re-victimized. Some clients have also felt re-injured in the process by having their reality denied, by feeling diminished when limited sanctions were recommended, or by having their trauma prolonged in drawn out complaint proceedings which often took several years.

Because the effects of sexual misconduct are so devastating to so many clients, few clients come forward to make complaints. In 1985 Kenneth Pope suggested a distinct syndrome called the Therapist-Patient Sex Syndrome which is similar to borderline personality disorder, posttraumatic stress disorder, rape response syndrome, reaction to incest and reaction to battering. He said there are "cognitive dysfunction, identity and boundary disturbance, ambivalence, lability of mood, inability to trust, sexual confusion, suppressed rage, and feelings of guilt and emptiness." (2) There is also a suicidal risk. According to the March 1987 Report of the California Senate Task Force on Psychotherapist and Patients Sexual Relations,

few victims ever complained to any authority. This reluctance to complain was identified as related to the injury sustained in these cases. Many victims also felt powerless, and feared negotiating complex legal and bureaucratic systems. The report stated that among those who were aware that sex between therapists and clients is unethical or actionable, which is less than 50%, "only between one and four percent of victims ever take action..(and of those) 3% notified professional ethics committees and 3% notified state licensing boards... 1/3 of those reporting did so immediately, 1/3 complained within 6 months, and a significant proportion waited 3 years or more before acting."(3)

Keith-Spiegel & Koocher wrote about those who complain to Ethics Committees. They said that angry feelings seemed to be the primary motive in taking formal action against a psychologist and that those feelings sustained complainants throughout this arduous process. They said that "ethics committees tend to hear from complainants who are resourceful, articulate, rankled, and persevering...Consumers who may have legitimate grievances of an ethical nature against psychologists, but who are hurt, frightened, unassertive, unresourceful, or inarticulate may never report them to the ethics committees or to any other redress mechanism." (4) They reported that complainants often dropped charges when they were asked to sign waivers of confidentiality. They stated that complainants also had to share their identities and the nature of their complaint with the accused therapist. They acknowledged that these policies may have caused some discomfort to complainants even though they were designed to protect the due process rights of the respondents, as well as the rights of the complainants.

Four clients who had been through a complaint process for sexual exploitation against their former therapist were interviewed to gather information on how to improve the process. While these clients represent the minority of such clients according to the percentage of those who come forward, they offered sound recommendations on improving the procedures. During an unstructure interview, the focus was on one open-ended question: What could be improved in the complaint process so that other clients won't have to face the same problems you did? A list of other relevant questions was introduced as the material presented itself, and included such items as the following: 1. When did you know the therapist was being inappropriate with you? 2. How did you decide to do something about it? 3. How long was the process from the decision to do something until a resolution was reached? 4. Did you ever want to confront the therapist directly? Did you? 5. Did you feel satisfied with the results?

Each of the four clients had a different experience in pursuing her complaint. Two had initiated their complaints through the ethics committees of the therapists' professional associations. One of these clients was later called by the Board of Registration in Medicine to testify. Eventually, she took her story to the press. A third client began her complaint with the Board of Registration in Psychology, and then followed with a malpractice suit to recoup her legal expenses. The fourth started with an attorney, a malpractice suit, and the court system. While this malpractice case has settled, the client is deciding whether to continue with the Board of Registration in Medicine or the District

Attorney's office. The question remains what can we learn from these interviews about what changes can be implemented to improve the process.

One client whose therapy was terminated in order for her to have a sexual relationship with her psychologist, called the ethics committee some ten years later. She felt that she didn't get the supportive response she wanted from the ethics committee, but acknowledged this may have been the result of the time elapsed. She also was distressed by the process because she didn't know how long she would have to wait for the resolution. Finally, at the end of her wait, she was simply told that some action had been taken, but was not informed of the nature of that action. She felt that perhaps ethics committee members should be paid for their time, and that there should be clear guidelines about the procedures, and the length of time involved in the investigation. She also thought that the client should be informed of final action taken. This client, who did not get personal satisfaction in her complaint, now counsels others to consider what course of action they want to take. She would like to see the statute of limitations lengthened. This client has also begun working on developing guidelines for how to respond to clients who are reporting an ethics violation.

Another client initiated her action through the ethics committee of the Psychoanalytic Institute. She said that when she first felt some anger, she knew she was in a sick relationship and had to get out. She ended the sexual relationship, but the psychiatrist insisted that she continue for another two months for termination. It took her eleven months to end the relationship. During this time, she recalled telling another psychiatrist, who

was a friend, about the problem without being specific, and at the same time hoping he would rescue her. He didn't, but said that if she decided to do something, he would help her. A couple of years later, she called the psychiatrist who had treated her. She told him that what had happened between them was wrong, and she wanted repayment for the therapy. When he refused to comply, she contacted the psychiatrist, who was her friend. He, in turn, wrote a letter on her behalf to the Psychoanalytic Institute. At this time she thought the psychiatrist needed to be rehabilitated. The psychiatrist admitted that they had had a sexual relationship, but the Psychoanalytic Institute did not have an ethics committee before this complaint in 1976. The client was never notified about whether they took any action or not. However, both the psychiatrist and the client retained lawyers to work out a settlement. They agreed that the psychiatrist would return the money she had paid him for therapy and pay the legal fees. The money that had gone to the insurance company was also returned to her, and she forwarded it to the company. The psychiatrist also agreed to go to therapy and get supervision. The client signed a waiver that she would not pursue any further legal action. Several years later someone from the Board of Registration in Medicine called her because they had received some other complaints about this same psychiatrist. The Board wanted to hear about her experience. She went in and told them what had happened to her, but didn't hear back from them. She kept calling to find out the status of the case. She said that the Board's initial recommendation was like a "slap on the wrist" because they concluded that he was cured although his practice needed to be monitored. She was concerned that he hadn't been rehabilitated and was still practicing. He had been working at a women's college, and had been sexually involved with two students. He continued to pursue one, after their relationship had ended, by calling her

yearly. When the Board learned that he had been calling this student they decided to re-open the case. This client decided to go to the press, hoping that other victims would come forward. She also wanted to let the community know that a traditional well respected psychiatrist could in fact be involved in this kind of harmful practice. The psychiatrist resigned his license. This process through the Board of Registration in Medicine took two years to reach resolution. This client also expressed that because of her experience, she probably would never go back to another therapist. She has also begun to talk to numerous other victims. She said that their worst fear is that therapists will deny all accusations. Thus, it is so important for other people-- therapists, ethics committee members, board members, investigators, or lawyers to validate the reality of the clients if they believe them. She suggested that clients need to be told by others, "Nobody had a right to do that to you." She believes the profession needs to "police" itself better, and therapists need to be educated to handle the problems. She said that she heard one therapist say that if other people haven't come forward to report the abusing therapist, why should I. And investigators need to be better trained. She also thinks her experience was different from those of most clients because she had only gone to this psychiatrist to help her deal with a crisis situation. She thinks that most clients take twelve to fifteen years before they have the awareness that someone has done something wrong. Thus, she believes that the statute of limitations should be expanded, to three years from the time the damage is recognized. She also believes that the recognition begins when the client first expresses anger. She said that there needs to be better feedback mechanisms. For example, after receiving a written complaint, the board or ethics committee should send a letter thanking the person for coming forward, should explain the procedures, and

should give estimates on how long the process will take. She also thinks the process should be expedited. She would like to see licensing fees raised to provide funding for educational purposes. She would like to see a data bank of names of abusive therapists. And most important she would like to see a support network for women who have been abused.

The third client first pursued a complaint through the licensing board because she felt it was important for the psychologist to lose her license so that she would not harm anyone else. She said it would have been easier if she could have hired her own attorney rather than rely on the board's attorney. As it happened, she did hire her own attorney, who became the advisor to the Board's attorney, someone recently out of law school with limited experience. This client felt she needed her own attorney to win her case. However, what really made the difference was her testimony versus the psychologist's testimony. Her lack of trust in the system still continues. She believes that the system exists to protect itself, and she doesn't have much hope for improvements. She says that more experienced attorneys and investigators will help, but more money from the state is unlikely. The main problem she encountered was the lengthy process which took several years. She said that the Board of Registration in Psychology in 1983 was composed of five psychologists who did this work voluntarily, meeting once a month. Ideally, she would like to see these psychologists paid for hearing these cases. Then perhaps they would work on the cases more often than once a month. Luckily, she was fortunate enough not to have to worry about money. She did recoup all legal expenses in her malpractice suit that was settled out of court for \$40,000.

The fourth client pursued a civil action suit and received a small settlement. She was glad she began this way because it gave her a chance to create support for herself. After her settlement, she spoke to the press, and began to find others abused by this same psychiatrist. She said, "Being the only one was very difficult." She also said, "The most difficult thing was the victims had to come forward when there was so much knowledge about the abuser." She said that while she told other doctors, to her knowledge, nothing was done. She said that other professionals knew this psychiatrist had a problem, but they were unable to do much to stop the abuser. And it took her seven years after her therapy in 1980 to reach a level of awareness that she had been abused. She said that she went to another therapist after her abusive psychiatrist. This second therapist was neither supportive nor knowledgeable in dealing with the abuse. They spent one session discussing it. Years later when she saw this second therapist in a social context, he made the comment to her, "I always thought you had come on to him." Thus, it seems that he assumed the client was to blame. Seven years after the abuse, the client went to a third therapist who suggested she try meditation. She ~~said that~~ ^{found out that he was} she was taught meditation by the person who abused her. She said that this therapist responded appropriately, helped her understand what had happened, and told her what options she had in making a complaint. It seems how the therapist responds to the exploited client makes a difference. This client also participated in a workshop about possible options with other clients that had been abused. She said that hearing the stories of others was very supportive because she had felt she had been put in isolation by the offending psychiatrist. She also said that she had been told that initiating a complaint through the Board of Registration in Medicine historically was very difficult and less than satisfying.

She had called them initially, but had been delayed by having to put her complaint in writing. She had wanted to go to talk to someone, but was told she didn't have to do this even though that was what she wanted. She said they never adequately explained how their process worked, although she has since heard that they have made changes in their procedures. She said, "Victims don't receive phone calls back from overburdened agencies and boards...imagine how that feels to someone who has finally mustered the courage to call, to have to keep calling." She was also told by someone in both the Board of Registration in Medicine and the District Attorney's office that to be successful, they needed to have more than one victim. Thus, victims can feel minimized by the process. This client favors a criminal law arguing that therapists should not be separated from other sex offenders. She said that if a woman decides to take some action, she should have all options open to her including criminal proceedings. She said that so many women are temporarily disabled, they can't work and are often suicidal. The impact is so great that it is often difficult to convince another victim to come forward. She continued to say, "Some therapists continue to practice without a license, have no malpractice insurance, and put all their assets in their spouse's name. In such a situation what recourse does a victim have?" She also asked why a woman would make this up when the experience is so degrading and people have said horrible things to her such as, "How did you ever let him do that to you," or "If people heard about this, they are going to think you are a whore."

Thus, all four clients were concerned with stopping the therapist from practicing and harming others. They also wanted some acknowledgement that they had been harmed and wanted some kind of recompense. And, if the therapist was unable to do admit his error, make restitution, and stop injury

others, they expected that the ethics committee, the board, or the court would insure this result. Several clients felt that it would be helpful to have an advocate who could discuss possible options in pursuing a complaint. All supported expediting the process of ethics committees, boards, and legal action. Some even thought that ethics committee members and board members when working on a case should get paid to guarantee quicker action. These clients could have benefitted from having the procedures explained clearly, being given estimates on the length of time involved, and having the results communicated directly. In effect the atmosphere of secrecy could be broken by clear, open, direct communication. Several clients mentioned mandatory reporting by other professionals. Perhaps mandatory reporting by another professional could prevent further abuse by putting the therapist on notice. However, ethics committees or licensing boards need some procedure to deal with these therapists when a client is not named. And clients who are not ready to come forward need to be protected from being named. One client suggested keeping data banks on abusive therapists as a solution. Several clients mentioned they were in support of criminal laws as an option.

Many of these clients' recommendations are supported in the literature. For example, Keith-Spiegel & Koocher discussed the problems complainants to ethics committees have that reinforce the first client's criticisms. They said that when a final decision has been made, the complainant will be informed that some action has taken place, but often given little specific feedback. They also reported that many complainants feel dissatisfied with the results although they are given rules and procedures and possible sanctions at the beginning of the process. They thought that complainants do not fully understand the scope of what

ethics committees can do. Advocates could serve this purpose. The authors also said that in general ethics committees do not pursue complaints when complaints are anonymous and when the statute of limitations has passed, maximally five years after the alleged violation occurred or came to the complainant's attention. Thus, in the first client's situation, most ethics committees would not have considered investigating the complaint because the statute of limitations had passed. The authors stated that ethics committees take from three months to several years, with the average case lasting from six to eight months. And, this delay is distressing to the complainant. Finally, they reported, "Complainants (to ethics committees) may obtain few benefits, but should receive altruistic satisfaction from helping the profession to improve itself." (5)

The ethics committee in Massachusetts seems intent on improving procedures. Direct feedback to clients about final actions is now part of the procedures as provided in the 1987 By-laws. The committee is working on a revision of the operating guidelines based on the APA Ethics Committee Model. Perhaps it would be good to keep records of anonymous letters. It also seems that the ethics committee could serve most efficiently as a place where colleagues report other colleagues. Even in the Ethical Principles of Psychologist it states in Principle 7, g, PROFESSIONAL RELATIONSHIPS: "When psychologists know of an ethical violation by another psychologist, and it seems appropriate they informally attempt to resolve the issue by bringing the behavior to the attention of the psychologist. If the misconduct is of a minor nature and /or appears to be due to lack of sensitivity, knowledge, or experience, such an informal solution is usually appropriate...If the violation does not seem amenable to an informal solution, or is of a more serious nature, psychologists bring it

to the attention of the appropriate local, state, and/or national committee on professional ethics and conduct." (6) Thus, psychologists should be encouraged to report other psychologists, and may need to be mandated to do so as long as client confidentiality is protected. Presently, there is a mandatory reporting law in Massachusetts for all health care providers to report physician misconduct to the Board of Registration. Thus, psychologist must report physicians whether or not the client consents. However, if the client does not consent, the psychologist only has to give the physician's name and general nature of the alleged misconduct. The board will begin a preliminary investigation, but probably not be able to do much more without the client's cooperation. They will keep the information on record. Likewise, ethics committees could keep record of complaints without a client's name. However, if such a complaint were made, the alleged offending psychologist could be confronted by the chairperson of the ethics committee. If several complaints were made, a preliminary investigation could begin.

Sinnett and Linford in their article "Processing of Formal Complaints against Psychologists" stated that the question of where to initiate a complaint is not widely known by both professionals and patients. Thus, the case for an advocate or consultant makes sense. They also suggested that there ought to be formal liaison among regulatory bodies. They stated that the same case could be heard by several proceedings and efforts are duplicated. They mentioned that model legislation aims at limiting relevant disclosure of clinical records. They also reported that Hays (1980) concluded that licensing boards offer the quickest and most effective mechanisms for dealing with sexual contact between therapist and patient. (7) However, this conclusion differs somewhat from the experience of the third client interviewed for this paper. In Massachusetts the members of the licensing board are appointed unpaid psychologists who meet only once a month. Thus, these cases

are not presently expedited. The other problem is that a psychologist who loses his or her license can still practice as a psychotherapist in the state. Thus, clients may feel forced to take their case to lawyers or the media. Perhaps all mental health practitioners need to be licensed in order that their behavior can be monitored. Or perhaps a psychologist who loses his or her license could be prohibited from practicing without a license.

Bates and Brodsky stated in their book, Sex in the Therapy Hour, that the profession must monitor its own members. They stated that the power of the ethics committee is not very strong with the severest sanction being dropping the person from membership. However, they reported that ethics committees can also recommend that the case be brought to the ethics committee of the national organization or to the state licensing board. They reported that licensing boards often become more involved with cases than do ethics committees because they have investigative teams. But they mentioned "Licensing boards are limited by lack of funds, restrictive state laws, and the fear of litigation by defendants displeased with negative sanctions." (8) The boards only deal with psychologists who are licensed and their sanctions can include a "confidential reprimand, public censure, suspension of the license with probation, a period of professional supervision, or a specific plan of rehabilitation." (9) They do not readily revoke a license. They stated that civil litigation is involved with the effect of the therapist's unprofessional behavior on the client. They mentioned that some states have considered enacting legislation to enforce mandatory reporting if a therapist has knowledge that a previous therapist had sex with a patient. These laws would provide for the anonymity of the patient, yet help accumulate evidence against repeat offenders.

In 1983 Alan Stone recommended that a client who has been victimized be referred to a consultant as an adjunct to therapy. The client would waive confidentiality with the consultant and discuss ethical and legal remedies. The consultant would encourage and assist the client in pursuing some action against the unethical therapist. (10)

The Walk-In Counseling Center in Minneapolis has provided advocacy as well as counseling since 1974 for clients who have been sexually abused by therapists. In 1984 Schoener, Milgrom and Gonsiorek wrote that in "virtually all of our case in which a complaint was made, the client and/or her significant others reported that the complaint was beneficial to resolving the experience." (11) They also suggested a team approach since the work is so stressful. They recommended that professional associations recognize and effectively fulfill their obligations to protect client welfare. In 1986 Milgrom wrote about how therapist can serve as advocates (ie. actively assisting a client in formulating, filing, or processing a complaint in the case of unethical or unprofessional conduct on the part of a previous therapist). (12) More therapists need to learn how to serve as advocates.

Kathy Hotelling stated that being assertive by filing a complaint "can counteract feelings of victimization...However, the amount of emotional stress, public scrutiny, time, and money differs with the avenue chosen." (13) She wrote about civil suits. She stated that this course of action is available when therapists are not licensed yet hold themselves out to be professionals. Therefore, they are responsible for a higher "standard of care" than others, and are liable for malpractice charges under tort law. However, she also noted that many therapists did not have adequate resources to make such suits financially successful. She also mentioned that legal

options are also time consuming, expensive, and emotionally draining because of public scrutiny and loss of confidentiality. She stated that Simon reported in 1985 that fifteen states have passed statutes making sexual conduct relationships with a patient a criminal offense. (14)

Pope and Bouhoutsos reported that the courts have affirmed the authority of licensing boards to revoke the licenses of therapists who violate the prohibition of sexual involvement with clients. And they disclosed that 1/3 of the states have passed legislation making therapist-patient sexual intimacy illegal thus eliminating the need for expert testimony to establish the act as violating professional standards. (15) The authors also commented that because the trauma takes years to work through, and clients are reluctant to go to another therapist, the statute of limitations needs to be extended.

Estelle Disch, a certified clinical sociologist and a person who calls herself a survivor of sexual abuse by a psychotherapist, wrote that taking action in most cases is an effective form of empowerment once the frustration of the complaint process is over. She recommended talking over one's options with a lawyer so as not to interfere with a legal case. For example, she said it is not a good idea to talk to journalists while a case is pending. She also said that it is a good idea to check to see if the therapist has some assets since most malpractice insurance no longer covers sexual abuse as a result of the excessive claims filed. She concluded that therapists can take a stand "by helping to set firm limits on offenders, especially repeat offenders, considering mandatory reporting within professional associations, and working on legislation to underline the seriousness of sexual involvement with clients." (16)

While improvements are being made gradually in the complaint process for clients that have been sexually exploited by therapists, additional improvements are essential. Some of the issues are complicated warranting further discussions. These discussions should be on a national level because states can benefit from the experience of other states, especially in regard to the impact of criminal legislation. Discussions across disciplines also seem requisite because this problem is not unique to one profession. Ultimately, clients who have suffered needlessly must be heard. Their suggestions should be considered and implemented in some form if we are to serve their welfare and the welfare of future clients.

The implementation of several recommendations require further discussion. 1. The statutes of limitations need to be expanded. One client suggested an extension of three years from the time the damage is recognized. While clients should be encouraged to seek subsequent therapy with knowledgeable therapists, they often delay in seeking such therapy. If they delay too long, they made not be able to prove their case. 2. Efforts to expedite these complaint processes need to be made. Two clients suggested members of ethics committees and licensing boards should be paid for their time to hear these cases. 3. Psychologists should be mandated to report other psychologists while protecting client confidentiality. Presently, there are procedures for psychologists to report other psychologists to the ethics committees. This reporting could be encouraged in order that psychologists who are offenders are identified and possibly referred for treatment. However, what ethics committees can do with these alleged offenders when a client is not named needs to be clarified.

In conclusion, it is recommended that education for clients and professionals becomes a priority of the professional associations. Certainly, clients need to know that sexual intimacies with a therapist are unethical and what their range of options are in pursuing a complaint. The exploited clients should be given estimates on the length of time involved in pursuing an option. The final determinations of action by ethics committees and licensing boards should be provided directly to the clients. In effect, these clients have a clearer understanding of what they can realistically expect from filing a complaint. Ideally, clients make their decisions after exploration of their wants, needs, values, and resources. This exploration could occur in therapy with knowledgeable psychologists or with assistance from advocates/consultants. Certainly, these advocates/consultants could provide lucid explanations of the procedures and possibilities of actions of ethics committees, licensing boards, and the courts. Psychologists could receive additional training on how to deal with sexual attractions, how to respond appropriately to exploited clients, and how to be advocates/consultants. Psychologists may also need to be trained to investigate these cases and work with the ethics committees and licensing boards.

FOOTNOTES

1. Schoener & al., p.68
2. Pope & Bouhoutsos, p.64.
3. Bouhoutsos & al., p.3
4. Keith-Spiegel & Koocher, p.30
5. Ibid., p.34,35
6. Ethical Principles of Psychologists, p.637
7. Sinnett, p.539
8. Bates & Brodsky, p.150
9. Ibid., p.149
10. Stone, p.197
11. Schoener & al., p.68
12. Milgrom, p.1
13. Hotelling, p.233
14. Ibid., p.235
15. Pope & Bouhoutsos, p.31
16. Disch, p.56,57

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